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## COMMONWEALTH of VIRGINIA

### Virginia Department of Juvenile Justice

Below are summaries of bills relating to the juvenile justice system enacted during the 1999 to 2007 General Assembly sessions. By no means is the summary comprehensive nor does the summary capture entirely how the legislation impacts the juvenile justice system.

#### 2007 Juvenile Justice Legislative Highlights

**HB 2361 & SB 1168 - Compensation for Court-Appointed Counsel. Delegate Putney and Senator Stolle.** HB 2361 and SB 1168 amend Va. Code § 19.2-163 relating to compensation of court-appointed counsel. Under current law, there is no cap on court-appointed counsel fees for capital punishment cases. For felony cases punishable by imprisonment of 20 years or more, the reimbursement cap is \$1,235. For all other felonies, the reimbursement cap is \$445. For misdemeanor cases, the reimbursement cap is \$158. HB 2361 and SB 1168 raise the reimbursement caps for criminal cases in circuit court. The legislation allows the circuit court judge to authorize an additional \$850 for the serious felony cases and \$155 for lesser felony offenses. In circuit court, the cap for misdemeanor cases remains frozen at \$158.

In juvenile court, the current reimbursement cap is \$120 for any offense. HB 2631 and SB 1168 allow the court in its discretion to waive the limitation of fees up to an additional \$120 when the effort expended (the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances) warrants such a waiver. There is no question that this legislation is an important step in improving the quality of justice administered in Virginia's courtrooms. However, as passed, the legislation continues to reimburse counsel appointed by the juvenile court at a much lesser rate than counsel appointed by the circuit court.

**HB 3007 – In Circuit Court, Juvenile “Becomes” an Adult Only Upon Conviction. Delegate Marsden.** Under current law, once a juvenile is tried as an adult, no matter the outcome, that juvenile is treated as an adult in all future proceedings. HB 3007 amends Va. Code § 16.1-271 pertaining to a juvenile certified to be tried as an adult, but not convicted. Under HB 3007, if a juvenile is tried as an adult, but is not convicted, jurisdiction over that juvenile for any future alleged delinquent or criminal behavior would be returned to the juvenile court.

**HB 2053 – In Circuit Court, Sentencing a Juvenile Convicted of Capital Murder. Delegate McQuigg.** HB 2053 amends Va. Code § 16.1-272 relating to sentencing of a juvenile convicted in circuit court of capital murder. HB 2053 provides that, upon a finding of guilty of any felony charge, the court shall fix the sentence of a juvenile defendant without the intervention of a jury. Although the bill appears technical in nature in that the bill attempts to be consistent with the U.S. Supreme Court's decision in *Roper v. Simmons* to remove juveniles from eligibility for the death penalty, it does create a new sentencing option for the circuit court. It clearly allows the circuit court the dispositional option

of sentencing a juvenile convicted of a capital crime to a life sentence that could be served in part in a juvenile correctional center with the remainder of the life sentence served with DOC. Under current law the sentence must be imposed by a jury, and it does not appear that the circuit court has the ability to impose a juvenile disposition upon a juvenile for a conviction of a capital crime. In addition, under current law it does not appear that a jury would be able to impose a “blended sentence” upon a juvenile convicted of a capital crime. If that is the case, the bill appears to make a significant and substantive change to current law. Under HB 2053, a juvenile convicted of capital murder and given a life sentence could now serve part of that sentence in a juvenile correctional center.

**HB 2201 & SB 1290 - Interstate Compact for Juveniles. Delegate McQuigg & Senator Edwards.** HB 2201 & SB 1290 amend Va. Code § 16.1-323, creates Va. Code § 16.1-323.1, and repeals §§ 16.1-324 through 16.1-330 relating to the Interstate Compact for Juveniles. This legislation repeals the Interstate Compact Relating to Juveniles located in Article 14 (§ 16.1-323 et seq.) of Chapter 11 of Title 16.1 and replaces it with the current version of the Interstate Compact for Juveniles, which has already been enacted in 30 states and provides for enhanced accountability, enforcement, visibility, and communication in relation to tracking and supervising juveniles moving across state borders.

**HB 3034 - DNA Data Bank - Reviewing Local Inmate Data System to Ensure DNA Submission. Delegate Bell.** As passed by the House and the Senate, HB 3034 amends Va. Code §§ 9.1-176.1, 16.1-237, 16.1-299.1, 19.2-303, 19.2-303.3, 19.2-310.2, and 53.1-145 relating to DNA analysis and the data bank. For the Department of Juvenile Justice (DJJ), HB 3034 amends Va. Code § 16.1-237 to add to the powers, duties, and functions of juvenile probation and parole officers. HB 3034 requires probation and parole officers to review LIDS or the Juvenile Tracking System (JTS) upon intake, and again prior to discharge, to determine whether or not a DNA sample has been taken of an offender who is required to submit a DNA sample. If it is determined that no DNA sample has been taken, the probation officer shall require the juvenile to submit a sample for DNA analysis. HB 3034 also amends Va. Code § 16.1-299.1 to require DJJ to verify that a DNA sample for an offender has been received by the Department of Forensic Science; and, if no sample has been received, notify the court, which shall then order that a sample be submitted for DNA analysis.

**HB 2530 & SB 738 - Psychiatric Inpatient Treatment of Minors Act & Special Judges. Delegate Iaquinto & Senator Cuccinelli.** HB 2530 amends Va. Code §§ 16.1-336, 16.1-339, 16.1-341, 16.1-345.1, 16.1-348, 37.2-803, and 37.2-804 relating to Psychiatric Inpatient Treatment of Minors Act and special justices. The Psychiatric Inpatient Treatment of Minors Act provides the statutory authority for the emergency and involuntary admission of a juvenile due to a serious mental illness or condition. Article 4 (§ 37.2-808 et seq. Emergency Custody and Voluntary and Involuntary Civil Admissions.) of Chapter 8 of Title 37.2 provides the procedures for conducting an involuntary admission hearing. During the recodification of the mental health statutes in 2004, the Code Commission determined that there was no authority in Title 37.1 for special justices to conduct involuntary commitment hearings. Prior to the recodification of the mental health statutes, many judicial districts relied upon special justices to conduct the hearing on the emergency involuntary admission.

The removal of the authority for special justices to conduct involuntary mental health commitments proved to be a significant problem for many juvenile courts. For years, many juvenile courts relied upon special justices to conduct these proceedings. These hearings must occur within 24 hours (72 at the latest) of the involuntary commitment. Conducting these hearings within 24 hours without the benefit of having special justices has been very difficult for the juvenile courts. In addition, the

juvenile courts experienced significant increases in court dockets. Subsequently, the issue has also become a problem for the court service units serving those juvenile courts. Several court service unit directors stated that without the ability of a special justice to handle these cases, the mandatory statutory timeframes for conducting these hearings are missed. HB 2530 seeks to make it clear that retired and substitute judges as well as special justices are authorized to perform hearings under the Act and to receive compensation.

**HB 2661 - Releasing Confidential Records for Consideration for Admission. Delegate Marsden.** HB 2661 amends Va. Code § 16.1-300 relating to the confidentiality of reports and records on juveniles appearing in juvenile court or under the custody or supervision of the Department of Juvenile Justice (DJJ). HB 2661 amends subdivision 7 of Va. Code § 16.1-300 (A) to allow confidential juvenile records and reports to be released to any person, agency, or institution having a legitimate interest when release of the confidential information is for the consideration of admission to any group home, residential facility, or postdispositional facility. Copies of the records must be destroyed if the juvenile is not admitted to the group home, residential facility, or postdispositional program.

**HB 2631 & SB 915 - Sharing Student Records & FERPA. Delegate Reid & Senator Lambert.** HB 2631 & SB 915 amend Va. Code § 22.1-287 relating to limitations on access to student records. This legislation adds a new paragraph that allows the principal or his designee to disclose identifying information from a student's scholastic record for the purpose of furthering the ability of the juvenile justice system to effectively serve the pupil prior to adjudication. The actual impact of the bill appears to be minimal if any. Subsection A of Va. Code § 22.1-287 already allows scholastic information to be shared with "any person . . . under judicial process." Outside of a "judicial process," subdivision 5 of Va. Code § 22.1-287 (A) allows school staff to share any records about a student to state or local law-enforcement or correctional personnel and probation or parole officers. HB 2631 adds a new subdivision to paragraph D of Va. Code § 22.1-287. The new language allows "identifying information" in a student's record to be released to attorneys for the Commonwealth, court services units, juvenile detention centers or group homes, mental and medical health agencies, state and local children and family service agencies, and DJJ and the staff of such agencies. However, the purpose for releasing the information is limited to providing services to that student prior to adjudication.

This legislation was submitted on behalf of the Office of the Attorney General (OAG). The intent of the legislation is to allow schools greater flexibility to share records with juvenile justice professionals for the purpose of diverting students from becoming involved in the juvenile justice system while complying with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).

## **2006 Juvenile Justice Legislative Highlights**

### ***Sex Offender and Crimes Against Minors Registry***

**SB 559 - Sex Offender and Crimes Against Minors Registry – Omnibus Crime Commission Legislation. Senator Stolle.** This bill incorporated similar provisions of the following House Bills: HB 846, HB 984, HB 1038, and HB 1333. This legislation contained numerous changes in the laws regarding sex offenders. It increased penalties for certain offenses, broadened the requirements for registration of sex offenders, enhanced the accuracy of the sex offender registry, increased probationary supervision of sex offenders, and expanded the number of offenders eligible for

commitment as sexually violent predators. For the purposes of this summary relating to juvenile justice, the legislation created Virginia Code §§ [16.1-249.1](#), [16.1-278.7:01](#), and [16.1-278.7:02](#).

- SB 559 created Virginia Code § 16.1-249.1 requiring local detention facilities to obtain from a person who is required to register all the necessary registration information including fingerprints and photographs. Facilities are to submit the information to the State Police on the date of the receipt of the person. If the detention facility becomes aware that the person has failed to register, the facility must investigate the failure or request the State Police to promptly investigate.
- Similar language was contained in newly created Virginia Code § 16.1-278.7:01 to require the Department of Juvenile Justice (DJJ) to collect the same information upon receipt of a juvenile committed to the Department.
- SB 559 also created Virginia Code § 16.1-278.7:02 requiring DJJ to resubmit the necessary registration materials, including fingerprints and a photograph to the State Police, and notify the State Police of the juvenile's impending release. Virginia Code § 16.1-278.7:02 also requires DJJ to give notice to the person of his duty to register with the State Police.

### ***Gangs***

**HB 847 & SB 561 – Omnibus Crime Commission Gang Information Legislation. Delegate Albo & Senator Stolle.** HB 847 and SB 561 amended Virginia Code §§ [2.2-2618](#), [16.1-300](#), [53.1-10](#), and [66-3.2](#) relating to criminal gang information in the custody of the Departments of Corrections and Juvenile Justice. The law-enforcement community raised issues concerning the Department's ability to share confidential records with officers during an investigation into alleged criminal street gang activity. HB 847 and SB 561 addressed the law-enforcement investigation issue by amending Virginia Code § 16.1-300 to allow information relating to criminal street gang activity in a social history be shared with the state police and local law enforcement for the purpose of conducting an investigation or prosecution into alleged criminal street gang activity. Furthermore, HB 847 and SB 561 created a "gang member database." HB 847 and SB 561 require the Departments of Corrections and Juvenile Justice to collect information on individuals identified as gang members and transmit that information to the Commonwealth's Attorneys' Services Council. The Council will disseminate the information to attorneys for the Commonwealth.

**HB 692 & SB 129 – Sharing Confidential Juvenile Gang Information with Law Enforcement. Delegate Marsden & Senator O'Brien.** HB 692 and SB 129 amended Virginia Code § [16.1-309.1](#) relating to exceptions to confidentiality when a juvenile is identified as affiliated with a criminal street gang. Where consideration of public safety requires, DJJ or a locally operated court service unit may release information about a juvenile who has been identified as affiliated with a criminal street gang as defined in § [18.2-46.1](#) to the state police or local law-enforcement officer. The exchange of information must be for the purpose of an investigation into criminal street gang activity.

### ***Immigration***

**HB 1046 – Reporting Alleged Illegal Alien Delinquents to Immigration and Customs Enforcement (ICE). Delegate Reid.** HB 1046 amended Virginia Code § [16.1-309.1](#) relating to reporting certain juveniles to the Immigration and Customs Enforcement Agency (ICEA). HB 1046 provides that a juvenile intake officer shall report to the United States ICEA a juvenile who has been

detained in a secure facility based on an allegation that he committed a violent juvenile felony and who the intake officer has probable cause to believe is in the United States illegally.

### *Juvenile Court Proceedings*

**HB 126 - Judge may Designate Venue for Detention Hearings. Delegate Kilgore.** HB 126 amended Virginia Code § 16.1-250 relating to juvenile detention hearings. Virginia Code § 16.1-250 provides the procedures for conducting a detention hearing when determining whether or not a juvenile should be detained prior to trial. When a juvenile is taken into custody and not released as provided in Virginia Code §§ 16.1-247 or 16.1-248.1, the juvenile must appear before a judge on the next day on which the court sits, not to exceed 72 hours (96 hours if the 72-hour period expires on a Saturday, Sunday, or legal holiday). Language in Virginia Code § 16.1-250 required the judge to sit “within the county or city wherein the charge against the child is pending.” HB 126 allows the court to conduct a hearing in another county or city, but only if two-way electronic video and audio communication is available in the courthouse where the charge is pending.

**HB 347 & SB 33 – Department of Correctional Education (DCE) and Court-Ordered General Educational Development (GED) Program Participation. Delegate Hamilton & Senator Potts.** HB 347 and SB 33 amended Virginia Code §§ 22.1-223, 22.1-254, and 22.1-254.2 relating to the GED program. HB 347 and SB 33 changed the definition of “general educational development program” to include not only a program for adults who did not complete high school but also for “students” with the permission of the superintendent of the school division, “and those who have been ordered by a court to participate in the program.” This legislation amended the “Compulsory School Attendance Law” to exempt from the law a “person” 16 to 18 years of age who is incarcerated in an adult correctional facility if that person is actively pursuing a GED certificate and a child who has obtained a GED certificate. The legislation also allows the local school board to determine the appropriate alternative education placement of the student whom a court has ordered into a GED program. HB 347 and SB 33 specify the persons eligible for a GED program to include “[p]ersons 16 years of age or older who have been expelled from school pursuant to §§ 22.1-277.06 through 22.1-277.08 . . . [and] [p]ersons required by court order to participate in the testing program.”

**HJ 136 – Crime Commission to Study the Juvenile Justice System. Delegate Moran.** The most significant piece of legislation in 2006 did not make a change to existing law, but it will lead to changes in the future. Delegate Moran introduced House Joint Resolution 136 that originally proposed a one-year study by the Virginia State Crime Commission to look at the American Bar Association’s (ABA) report from 2002 that assessed the quality of juvenile court proceedings. The Crime Commission will be looking at the entire juvenile code as it relates to delinquency. Furthermore, the study will occur over two years.

### *Committed Juveniles and Juvenile Correctional Centers*

**HB 1325 – Division of Child Support Enforcement (DCSE) to Issue Administrative Order for Child Support for Committed Youth. Delegate Caputo.** HB 1325 amended Virginia Code § 16.1-290 relating to support for a committed juvenile. HB 1325 allows the Department of Social Services (DSS) to establish the amount of the support obligation by the parents when a child is committed to the custody of DJJ and allows DJJ to collect child support from the parents from the date it receives the child. HB 1325 requires DJJ to provide notice in writing to the parent stating the parent’s obligation to



pay child support. This amendment is consistent with federal law. By request of DCSE staff and attorneys, HB 1325 removed archaic or unnecessary language from the existing Code section.

### ***Mental Health Issues***

**HB 368 - Venue for Conducting Hearing for the Involuntary Commitment of a Minor. Delegate Carrico.** HB 368 amended Virginia Code §§ [16.1-340](#) and [16.1-341](#) relating to admissibility of state mental health facility recommendations during an involuntary commitment hearing for a minor. HB 368 requires the juvenile court where the juvenile is located to conduct the emergency temporary detention order (TDO) hearing rather than the juvenile court where the juvenile originally resided. HB 368 also added language stating that the state mental health facility recommendations may be admissible during an involuntary commitment hearing of a minor.

*Side Bar:* 2005 Legislation Allows for Hearings to be Conducted Electronically - Legislation enacted during the 2005 session (HB 578) allows these proceedings to be conducted electronically. HB 578 provides that petitions and orders for emergency custody, temporary detention, and involuntary commitment of minors may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication. HB 578 created Virginia Code § [16.1-345.1](#) to allow the juvenile court to use electronic communication when conducting an emergency custody proceeding pursuant to § [37.1-67.01](#), a temporary detention proceeding pursuant to § [37.1-67.1](#), or an involuntary commitment proceeding pursuant to § [16.1-341](#).

### ***Group Homes***

**HB 577 – Regulatory Requirements for Children’s Group Homes and Residential Facilities. Delegate Nixon.** HB 577 amended and reenacted §§ [22.1-323.2](#), [37.2-408](#), [63.2-1737](#), and [66-24](#) of the Code of Virginia and added a section numbered [2.2-5211.1](#) relating to regulatory requirements for the licensure of, placements in, and reimbursement of certain residential facilities for children. The bill requires that the Boards and Departments of Education, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services to promulgate regulations including specific conditions of licensure for group homes. A second enactment requires the Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services; Juvenile Justice; and Social Services to promulgate emergency regulations to implement the provisions of this bill within 280 days of its enactment. A third enactment requires that the emergency regulations include provisions addressing HB 2461 (2005) and SB 1304 (2005). This bill was a recommendation of the Joint Subcommittee Studying Private Youth and Single Family Group Homes pursuant to HJR 685 (2005).

**SB 190 - Summary Suspension of Licenses for Group Homes and Residential Facilities. Senator Martin.** SB 190 amended Virginia Code §§ [22.1-329](#), [37.2-418](#), [63.2-1737](#), and [66-24](#) and added a section numbered [37.2-419.1](#) relating to summary suspension of licenses for group homes and residential facilities under certain circumstances. SB 190 authorizes the Superintendent of Public Instruction, the Director of DJJ, and the Commissioner of DSS to issue orders of summary suspension of a license to operate a group home or other residential facility for children in cases of immediate and substantial threat to the health, safety, and welfare of residents. A second enactment requires the Board of Education, the Board of Mental Health, Mental Retardation and Substance Abuse Services,

the State Board of Juvenile Justice, and the Board of Social Services to promulgate emergency regulations to implement the provisions of this bill within 280 days of its enactment.

### *School Enrollment*

**HB 95 & SB 656 – School Enrollment and Criminal/Delinquent Offense History. Delegate Lewis & Senator Rerras.** HB 95 and SB 656 amended Virginia Code § 22.1-3.2 relating to information required upon admission of new students. HB 95 and SB 656 require a parent, guardian, or other person having control or charge of a child of school age to provide to a public school, upon registration of a student, information concerning certain criminal convictions or delinquency adjudications. When the registration results from foster care placement, the information shall be furnished by the local social services agency or licensed child-placing agency that made the foster care placement.

## **2005 Juvenile Justice Legislative Highlights**

### *Juvenile Court Proceedings*

**HB 2670 - Juvenile Court: Representation may not be Waived Without Consultation if Charge is a Felony. Delegate McDonnell.** HB 2670 amended Virginia Code § 16.1-266 as enacted in the 2004 session (HB 600) concerning the timing of appointment of counsel when a juvenile is to be detained. HB 2670 raised the waiver portion of the bill to apply only to felonies rather than any committable offense (i.e., four Class 1 misdemeanors) under the original provisions of HB 600. Under HB 2670, a juvenile alleged to be a felon cannot waive his right to counsel. HB 2670 contains a second enactment clause that provided the Supreme Court with more discretion when determining payment to an attorney for the initial detention hearing. HB 2409, a bill designed to repeal HB 600 prior to HB 600 becoming effective was rolled into HB 2670, thereby preserving the substance of HB 600.

**HB 2529 - Probation and Parole: Notice of Transfer Hearing and Circuit Court Disposition. Delegate Melvin.** HB 2529 amended Virginia Code §§ 16.1-269.2 and 16.1-272 relating to notifications when a juvenile is transferred and tried and convicted as an adult in circuit court. First, when the attorney for the Commonwealth files a motion for a transfer hearing pursuant to subsection A of § 16.1-269.1, the attorney for the Commonwealth must provide notice to the designated probation services or other qualified agency of the need for a transfer report. Second, when the circuit court sentences a juvenile convicted as an adult, the circuit court clerk will provide a copy of the court's final order or judgment to the court service unit (CSU) in the same locality as the juvenile court to which the case had been transferred.

**HB 2650 - Juvenile Detention: Commonwealth's Attorney may Appeal Release of Juvenile. Delegate Hurt.** HB 2650 amended Virginia Code § 16.1-248.1 relating to appealing a decision not to detain a juvenile in detention prior to trial. The original bill authorized the attorney for the Commonwealth to appeal *any* decision of the judge, intake officer, or magistrate to release a juvenile over the objection of the attorney for the Commonwealth. Amendments added in the Senate ensure that revoking a juvenile's release mirrors the provisions for the revocation of bail or recognizance on the adult side. Under HB 2650, the Commonwealth attorney cannot challenge the release of a juvenile on bail or recognizance unless:

- the juvenile has violated a term or condition of his release,
- is convicted of or taken into custody for an additional offense, or
- the attorney for the Commonwealth presents evidence that incorrect or incomplete information was relied upon by the intake officer or magistrate establishing the initial terms of release.

If the above conditions are met and the juvenile court releases the juvenile, either on bail or recognizance, over the objection of the attorney for the Commonwealth, the attorney for the Commonwealth may appeal the decision to the circuit court. The Senate amendments significantly restricted the ability of the Commonwealth's attorney's ability to appeal the decision to release a juvenile made by an intake officer.

**HB 2810 & SB 1342 - Drug Court Treatment Act: Authority to Establish in Chesapeake.**

**Delegate Cosgrove & Senator Lucas.** HB 2810 and SB 1342 amended Virginia Code § [18.2-254.1](#) relating to the Drug Treatment Court Act by allowing the establishment of a drug treatment court in Chesapeake. During the 2004 session, the General Assembly enacted HB 1430 establishing the Drug Treatment Court Act to allow the establishment of drug treatment courts as specialized court dockets within the existing structure of Virginia's court system. HB 1430 provided the Supreme Court with the administrative oversight for implementing drug treatment courts in circuit courts and in juvenile courts. HB 1430 further established a state Drug Treatment Court Advisory Committee chaired by the Chief Justice of the Supreme Court. The state Drug Treatment Court Advisory Committee established the criteria for implementing a drug treatment court. HB 1430 also provided that no drug treatment court shall be established subsequent to March 1, 2004, unless the jurisdiction or jurisdictions intending or proposing to establish such a court have been specifically granted permission under the Code of Virginia to establish such court. Therefore, the City of Chesapeake could establish a drug court without this legislation subject to the requirements and conditions established by the state Drug Treatment Court Advisory Committee. The City of Chesapeake is the first locality to seek such authority under the Code since the passage of the Drug Treatment Court Act in 2004.

***Juvenile Court Dispositions and Punishments***

**HB 2318 - Juvenile Sex Offenders: Judicial Discretion to Require Registration of a Minor who Commits Certain Sex Offenses. Delegate Griffith.** HB 2318 amended Virginia Code §§ [9.1-901](#), [9.1-902](#), and [9.1-903](#) relating to judicial discretion to require registration in the Sex Offender and Crimes Against Minors Registry (Registry) of a minor who is adjudicated delinquent of a registrable offense in juvenile court. Prior to HB 2328 only those juveniles tried and convicted as adults in circuit court for registrable offenses were required to register in the Registry.

Under HB 2318, a juvenile court may order a juvenile over the age of 13 found delinquent for a sex offense to register if the court finds that (i) the degree to which the delinquent act was committed with the use of force, threat, or intimidation; (ii) the age and maturity of the complaining witness; (iii) the age and maturity of the offender; (iv) the difference in the ages of the complaining witness and the offender; (v) the nature of the relationship between the complaining witness and the offender; (vi) the offender's prior criminal history; and (vii) any other aggravating or mitigating factors relevant to the case warrants registration. The section applies to offenses that occur on or after July 1, 2005.



**HB 2206 - Juvenile Court: Deferred Dispositions for Delinquents – No Time Limitations.**

**Delegate Marrs.** HB 2206 amended Virginia Code § 16.1-278.8 to remove the time limitations upon the juvenile court's authority to defer a disposition imposed upon a juvenile found to be delinquent. Prior to HB 2206 the juvenile court had two options in which it could defer either the imposition of the finding of guilt or the imposition of the disposition. First, the juvenile court may impose a disposition and defer the finding of guilt for up to 12 months pending the successful completion of the disposition. If the juvenile successfully completes the terms of his probation, the court will discharge the juvenile and dismiss the proceedings against him without an adjudication of guilt. Second, the court may defer the disposition for up to 12 months after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred. HB 2206 struck the 12-month language and requires the juvenile court to establish a specific period of time based upon the *gravity of the offense and the juvenile's history*.

*Side bar:* There are no designated offenses for determining eligibility for deferment under either option under current law, and the bill does not change that.

**HB 2722 - Juveniles: If Adjudicated Delinquent of Certain Crimes, Unlawful to have Firearm, Rest of Life. Delegate Scott.** HB 2722 amended Virginia Code § 18.2-308.2 relating to the possession and transportation of guns and other weapons by juveniles adjudicated delinquent of certain offenses. The bill made it unlawful for a person who was adjudicated delinquent on or after July 1, 2005, of murder, kidnapping, armed robbery, or rape and was 14 years of age or older at the time of the offense to possess or transport firearms, stun weapons, tasers, or concealed weapons for the rest of his life. Prior to HB 2722 such a person would be able to possess these weapons at age 29. Possession or transport of these weapons is a Class 6 felony. The mandatory minimum sentence of two years for a possession of a gun by a person who has been convicted of a felony is removed for persons whose felony conviction was more than ten years ago.

***Incarcerated Juveniles and Programs and Education***

**HB 2657 - Establishing Juvenile Work and Educational Release Programs. Delegate BaCote.** HB 2657 added Virginia Code §§ 66-25.1:1 through 66-25.1:4 relating to DJJ establishing juvenile work release programs. HB 2657 authorizes the Director of DJJ to establish work release programs whereby (i) a juvenile, who is proficient in any trade or occupation and who meets the work release criteria established by the Director, may be approved for employment by private individuals, corporations, or state agencies at places of business; or (ii) a juvenile who the Director is satisfied meets the work release criteria and is capable of receiving substantial benefit from educational or other related community activity programs that are not available within a juvenile correctional center (JCC) may attend such programs outside of the juvenile correctional facility. The bill requires DJJ provide juveniles committed to the Department with opportunities to work and participate in career training or technical education programs as operated by DJJ or by the Department of Correctional Education (DCE) and sets forth provisions relating to eligibility for work release, compensation, custody, and penalties for violating the terms of work release.

### ***Incarcerated Juveniles and Mental Health Issues***

#### **HB 2245 & SB 843 - Mental Health Services Transition Plan for Incarcerated Juveniles:**

**Regulations. Delegate Bell & Senator Deeds.** HB 2245 and SB 843 amended the Virginia Code by adding § 16.1-293.1 relating to a mental health transition plan for incarcerated juveniles. The bills require DJJ to promulgate regulations for the planning and provision of post-release services for persons committed to the custody of DJJ pursuant to Virginia Code subdivision A 14 of §16.1-278.8 or placed in a post-dispositional detention program pursuant to subsection B of §16.1-284.1 and identified as having a recognized mental health, substance abuse, or other therapeutic treatment need. The regulations will provide the structure and substance for the development of a mental health plan for a juvenile who has been identified by DJJ as having a mental health treatment need. The legislation requires that a mental health transition plan be completed prior to the juvenile's release for the purpose of ensuring the continuity of necessary treatment and services. The purpose of the mental health plan will be to identify and coordinate the provision of existing services available within the community to which the juvenile will be returning. The goal of the legislation is to promote the seamless continuation of mental health services by the community in which a juvenile will reside.

**SB 1070 - Juveniles: Emergency Hospitalization Prior to Trial. Senator Cuccinelli, II.** SB 1070 amended Virginia Code §§ 16.1-340, 16.1-341, 16.1-342, 16.1-345, and 16.1-346.1 relating to emergency treatment of juveniles prior to trial. The bill is similar to existing provisions for adults under Virginia Code § 19.2-169.6, but applies only to juveniles. SB 1070 amended the Code provisions pertaining to the authority for the emergency admission of a minor by taking that minor into custody for inpatient treatment because probable cause exists to believe the minor is mentally ill and in need of hospitalization specifically to include *a minor in detention or shelter care*. A minor, *including a minor in detention or shelter care*, may be taken into custody and admitted for inpatient treatment pursuant to the procedures specified in §§ 37.1-67.01 or 37.1-67.1.

### ***Gangs***

#### **HB 2734 - Gangs: Reporting Organized Criminal Activity and Membership. Delegate**

**McQuigg.** HB 2734 amended Virginia Code §§ 16.1-269.2, 16.1-273, and 18.2-55.1, added § 52-8.6, and repealed § 16.1-299.2, all relating to gang reporting. HB 2734 repealed a provision relating specifically to reporting of organized youth gang activity and created a general law-enforcement reporting requirement of all gang activity to the Organized Criminal Gang File in the Virginia Criminal Information Network and the Violent Criminal Gang File of the National Crime Network Center maintained by the Federal Bureau of Investigation. The bill removed references to "youth gang" in Title 16.1 and replaced such references with *criminal street* gang as defined in § 18.2-46.1. Now, when the juvenile court orders a transfer report under § 16.1-269.2 or a social history under § 16.1-273 to be completed, each report must contain an assessment of any involvement or affiliation with a criminal street gang instead of a youth gang. The bill also repealed § 16.1-299.2. The substantive provisions in § 16.1-299.2 creating a Youth Gang File with the State Police were moved to the newly created § 52-8.6.

### ***Juvenile Records and Release of Confidential Information***

**SB 1320 - Confidentiality of Juvenile Records: Releasing Information When a Juvenile is a Fugitive. Senator Reynolds.** SB 1320 amended Virginia Code § 16.1-309.1 to allow the public

release of juvenile information (name, age, physical description, photograph, charge, and other information that might expedite apprehension) when a juvenile becomes a fugitive from justice to apply to juveniles who are being held in custody by a law-enforcement officer or in a secure facility. Prior to SB 1320 release of this information was allowed only if the juvenile was charged with certain felonies (rape, robbery, burglary, or a Class 1, 2, or 3). The law provided that the information may be released only upon court order. This bill provides that if the juvenile becomes a fugitive from justice at a time when court is not in session, DJJ, attorney for the Commonwealth, or a CSU may release such information.

### ***School-Related Legislation***

**SB 1006 - Expediting School Enrollment of Foster Care Children. Senator Hanger, Jr.** SB 1006 amended Virginia Code §§ 22.1-289 and 63.2-900 and added § 22.1-3.4 relating to school enrollment of children placed in foster care. SB 1006 requires that whenever a student has been placed in foster care and the social services agency is unable to produce the required documents for enrollment, the student must be immediately enrolled; and the person enrolling the student must provide a written statement that, to the best of his knowledge, sets forth the student's age, compliance with notice requirements regarding good standing in the previous school, and that the student is in good health and is free from communicable or contagious disease. The sending and receiving school divisions must cooperate in facilitating the enrollment of the foster child across jurisdictional lines and may agree to allow the child to continue to attend the school in which he was enrolled prior to the most recent foster care placement, upon the agreement of the placing social services agency that such attendance is in the best interest of the child. If the student is allowed to continue to attend the previous school, the receiving school division will be accorded foster children education payments and may enter into financial arrangements with the sending school division. Local school divisions are required to expedite the transfer of the scholastic record of the student. Social services agencies are required to notify, within 72 hours of placing a child in foster care placement, the principal of the school in which the student is to be enrolled and the superintendent of the relevant school division or his designee and to inform the principal of the status of the parental rights. The bill clarifies that no foster child can be charged tuition.

**HB 2266 & HB 2879 - Required School Policies on Bullying and Reporting of Stalking. Delegates Bell & Marshall.** HB 2879 amended Virginia Code §§ 22.1-208.01, 22.1-279.3:1 and 22.1-279.6 relating to school board policies relating to bullying, harassment, and intimidation. The bills direct the Board of Education to include bullying in its standards for school board policies on student conduct and requires school boards to include (i) instruction on the inappropriateness of bullying in their character education programs and (ii) bullying provisions in their student conduct codes. In addition, the measure requires the reporting of incidents of stalking to principals and division superintendents. Finally, except as may be prohibited by federal law, regulation, or jurisprudence, principals must report certain violent acts, stalking, and other conduct to parents of the minor student who is the target of the conduct; including that the incident has been reported to law enforcement, and that the parent may contact law enforcement for further information.

**HB 2267 - Civil Immunity for Reporting School Bullies. Delegate Bell.** HB 2267 amended Virginia Code § 8.01-220.1:2 relating to civil immunity for reporting incidents of bullying. A school employee or school volunteer will not be liable for any civil damages *arising from the prompt good faith reporting of alleged acts of bullying or crimes against others to the appropriate school official.*

### *Group Homes and Residential Facilities*

**HB 2461 - Youth Group Homes: Designated Community Liaisons and Regulatory Requirements.** Delegate Nixon, Jr. HB 2461 amended Virginia Code §§ 22.1-323.2, 37.1-189.1, 63.2-1737, and 66-24 and added § 22.1-16.3 relating to licensed or certified group homes or other residential facilities. The portion of the bill that applies to DJJ amended § 66-24 to require the State Board to adopt regulations that require persons who are certified to operate group homes or other residential care facilities for juveniles to provide to the Department a name, address, and telephone number of a contact person to serve as the facility's community relations liaison and to notify the Department immediately of any changes in this information. The Board's regulations must address the services required to be provided in such facilities as it may deem appropriate to ensure the welfare and safety of the juveniles. The regulations must include specifications for the structure and accommodations of such facilities according to the needs of the juveniles to be placed in the home or facility. The regulations must establish rules concerning allowable activities, local government- and group home- or residential care facility-imposed curfews, and hours for study, recreation, and bedtime.

**HJ 685 - Youth Group Homes, Private: Joint Subcommittee Study.** Delegate Hall. HJ 685 created a joint subcommittee to study private youth and single-family group homes in the Commonwealth. The joint subcommittee shall (i) analyze the licensing requirements and enforcement of licensing standards, the need to notify localities of licensing violations in those localities, the rationale for and impact of concentrations of homes in certain communities, the appropriate siting requirements for such homes, and other issues that affect the integration of youth group home residents into the community; and (ii) study the excessive concentration of single family group homes in certain neighborhoods, the adverse effects of this concentration on the residents of single family group homes, the adverse effects of this concentration on those neighborhoods, and feasible regulatory alternatives that would result in more appropriate locations of single family group homes for the mutual benefit of the residents thereof and the affected neighborhoods.

## **2004 Juvenile Justice Legislative Highlights**

### *Intake*

**HB 1062 - Enhancing Informal Diversion by Juvenile Intake Officers.** Delegate Armstrong. HB 1062 amended Virginia Code § 16.1-260. HB 1062 gives an intake officer greater discretion to proceed informally against a juvenile who is alleged to have committed a misdemeanor or status offense. Prior to HB 1062, a juvenile could not be diverted for an alleged violent juvenile felony and only informally diverted once for all other offenses including all misdemeanor, CHINS<sup>1</sup> and CHINSup<sup>2</sup> offenses. Under the provisions of HB 1062, the intake officer must continue to file the

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<sup>1</sup> CHINS means a child in need of services. Virginia Code § 16.1-228 defines a "child in need of services" as meaning a child whose behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of the child.

<sup>2</sup> CHINSup means a child in need of supervision. Virginia Code § 16.1-228 defines a "child in need of supervision" as meaning a child who is a truant or a runaway. "Truant" means a child who is subject to the compulsory school attendance law (i.e., child is under the age of 18) and is habitually and without justification absent from school.

petition and initiate formal court action for a juvenile who is alleged to have committed a violent juvenile felony. If a juvenile is alleged to have committed a non-violent felony, the intake officer may proceed informally only once. Upon the second petition alleging a non-violent juvenile felony, the intake officer must initiate formal court action. However, for all other lesser offenses (all misdemeanors, CHINS and CHINSup offenses), HB 1062 allows the intake officer discretion to determine whether or not the juvenile should be informally diverted.

**SB 577 & HB 653 - Intake and Detaining Adults in Jail for Juvenile Offenses. Delegate Bell & Senator Colgan.** SB 577 and HB 653 amended Virginia Code §§ 16.1-247 and 16.1-249. SB 577 and HB 653 allow a juvenile intake officer or a magistrate to order the confinement of a person over the age of 18 in a jail rather than in a juvenile detention facility for an offense that occurred prior to the person obtaining the age of 18. If a person over the age of 18 is arrested for a parole violation following the person's release from a JCC, the judge, intake officer or magistrate may order the pre-dispositional detention be in a juvenile facility. These bills were requested by the Virginia Juvenile Justice Association (VJJA). DJJ had an identical bill (HB 937 Del. Kilgore), which was rolled into HB 653. This legislation enhances the safety of juveniles being detained in juvenile detention facilities. Placing an adult with juveniles in a juvenile detention facility places those juveniles at greater risk of harm or negative peer influence.

**HB 1080 & SB 593 - Intake and School Notification for Gang Offenses. Delegate Parrish & Colgan.** HB 1080 and SB 593 amended Virginia Code § 16.1-260. HB 1080 and SB 593 expanded the list of offenses requiring an intake officer to provide notification to the school superintendent when a juvenile is alleged to have committed a certain delinquent offense to include gang-related offenses. SB 593 amended Virginia Code § 16.1-260 to require notification when a juvenile is alleged to have committed a prohibited criminal street gang activity as defined under Virginia Code § 18.2-46.2. In addition to prohibited criminal street gang activity, HB 1080 also added the recruitment of juveniles into a criminal street gang pursuant to Virginia Code § 18.2-46.3 to the list of offenses triggering the requirement that the intake officer provide notice to a school superintendent.

### ***Juvenile Court Proceedings***

**HB 600 - Appointment and Waiver of Counsel for Juvenile Court Hearings. Delegate Dudley.** HB 600 amended Virginia Code §§ 16.1-250, 16.1-266, and 16.1-267 and repealed § 16.1-250.1. The American Bar Association (ABA) released a critique of the juvenile justice system in Virginia in October 2002, entitled "Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings." Virginia was criticized for failing to appoint counsel for a juvenile until after the initial hearing with the consequence that many juveniles were ordered detained at the detention hearing without having representation by an attorney. The ABA report also uncovered significant numbers of children waiving counsel who did not appear to understand the gravity or consequences of their actions. Under HB 600 both issues were addressed. First, HB 600 requires the appointment of counsel on behalf of the child to occur prior to an initial detention hearing unless an attorney has been retained and appears on behalf of the child. Second, when a child is not detained, but is alleged to have committed an offense that could lead to commitment to a JCC, that child may waive his right to an attorney only after he consults with an attorney. In addition, HB 600 requires the following:



- the child's attorney must be notified of the detention hearing and any rehearing, and the attorney must be given the opportunity to be heard at the detention hearing;
- if the child is not released and the parent was not notified and does not appear at the detention hearing, the parent may request a rehearing by making a written request stating that he is willing and available to supervise the child upon release from detention and will return the child to court for all scheduled proceedings; and
- if it is determined that the child is not indigent, the parents must pay the costs of the attorney.

Given the substantive changes in the law, a delayed enactment of July 1, 2005 was added. Also, the Office of the Executive Secretary of the Supreme Court, in conjunction with the Commonwealth's Attorneys' Service Council, the Public Defender Commission and DJJ, had to develop written guidelines and procedures for implementing subsections B and C of § 16.1-266 of the Virginia Code as amended by HB 600. The Executive Secretary had to submit a report of findings and recommendations concerning the implementation of subsections B and C of § 16.1-266 to the Chairmen of the Senate Courts of Justice and House Courts of Justice Committees by December 1, 2004.

**HB 1430 - Drug Treatment Court Act: Created, Evaluated, but not Funded. Delegate Kilgore.** HB 1430 amended Virginia Code §§ 16.1-69.48:1, 16.1-69.48:3, 17.1-275, 17.1-275.8, and 18.2-251.02 and created a section numbered 18.2-254.1. HB 1430 established the Drug Treatment Court Act to allow the establishment of drug treatment courts as specialized court dockets within the existing structure of Virginia's court system. HB 1430 provides that drug treatment courts are specialized court dockets within the existing structure of Virginia's court system offering judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases. Administrative oversight for implementation of the Drug Treatment Court Act will be conducted by the Supreme Court of Virginia. A state Drug Treatment Court Advisory Committee will be established and will be chaired by the Chief Justice of the Supreme Court of Virginia or his designee. Each jurisdiction or combination of jurisdictions that intend to establish a drug treatment court or continue the operation of an existing one shall establish a local Drug Treatment Court Advisory Committee. The local Drug Treatment Court Advisory Committee will be responsible for establishing criteria for the eligibility and participation of offenders who have been determined to be addicted to or dependent upon drugs subject to the limitations as set forth in the Drug Treatment Court Act.

### ***Detention Criteria and Utilization***

**HB 1146 - Expediting Appeals from Juvenile Court to Circuit Court – Rocket Docket. Delegate McDonnell.** HB 1146 amended Virginia Code §§ 16.1-269.6 and 16.1-296. HB 1146 requires the circuit court, when practicable, to hold a hearing on the merits of any appeal of a finding of delinquency or the disposition within 45 days of its filing if the juvenile is in a secure facility pending appeal. If either the juvenile or the attorney for the Commonwealth has appealed a transfer decision, the circuit court must hear the appeal within 45 days after receipt of the case from the juvenile court. The phrase "when practicable" is ambiguous. However, the House Courts of Justice Committee inserted language stating that a juvenile held continuously in secure detention "shall be released" from confinement if no hearing is held on his case within 45 days. The court can extend confinement for good cause.

**HB 1209 - Reviewing Criteria for Placement in Detention. Delegate BaCote.** HB 1209 amended Virginia Code § 16.1-248.1 to allow a juvenile's probation officer to review a juvenile's placement in a local detention facility for the purpose of seeking a less restrictive alternative to confinement in that secure facility. Prior to HB 1209 Virginia detained its juveniles at a higher rate than the national average. This bill promotes efforts to limit the use of secure detention to only those juveniles who represent an ongoing threat to public safety and to limit the duration of detention when appropriate, less restrictive alternatives can be identified and implemented.

**HB 598 - Non-Mandated CSA Funding for Post-Disposition. Delegate Dudley.** HB 598 amended Virginia Code § 2.2-5211. Chapter 52 of Title 2.2 of the Code of Virginia establishes the Comprehensive Services Act (CSA). Virginia Code § 2.2-5211 establishes a pool of funds for community policy and management teams for purchasing residential and nonresidential services for statutorily identified categories of children. HB 598 amended Virginia Code § 2.2-5211 to allow the state pool fund to be used for children placed *in a community or facility-based treatment program in accordance with the provisions of subsections B or C of Virginia Code § 16.1-284.1*. Briefly, there are two categories of children: mandated and non-mandated. In net effect, HB 598 allows localities to tap into the non-mandated pool to fund a post-dispositional placement for a non-mandated juvenile through CSA. Virginia Code § 16.1-284.1 is referred to as "post-dispositional detention."

### ***Commitment and Juvenile Correctional Centers Legislation***

**HB 1355 - Commitment Criteria for Juveniles Found Delinquent. Delegate Hamilton.** HB 1355 amended Virginia Code § 16.1-278.8. Virginia Code § 16.1-278.8 provides the criteria for committing a juvenile to the custody of DJJ for placement in a JCC. A juvenile can be committed to DJJ for a felony or a Class 1 misdemeanor if the juvenile was previously adjudicated for a felony offense. Prior to HB 1355, a juvenile could be committed to a JCC for an offense that would be a Class 1 misdemeanor if the juvenile has previously been adjudicated delinquent on three occasions for offenses constituting Class 1 misdemeanors. Essentially, a juvenile needed to have four Class 1 misdemeanors to be committed to the custody of the Department. However, the language stating "previously been adjudicated delinquent on three occasions" was ambiguous.

HB 1355 amended the commitment statutes to read that a juvenile would be eligible for commitment upon adjudication for a Class 1 misdemeanor if that juvenile has been adjudicated delinquent on three or more offenses that would be Class 1 misdemeanors if "each such prior offense was not part of a common act, transaction, or scheme ...." The language tracks the "Three Strikes; You're Out" language. The new language clarifies the original legislative intent of legislation enacted in 2000 to require three separate "events" leading to the commitment of the juvenile to a JCC.

**HB 1274 - No CHINS Diagnostic Evaluations at RDC. Delegate Moran.** HB 1274 amended Virginia Code § 16.1-275 to remove children in need of services (CHINS) from those who may be placed in the temporary custody of DJJ for a 30-day diagnostic assessment at the Reception and Diagnostic Center (RDC) prior to final disposition of such cases. Placing a status offender at RDC is a violation of the Office of Juvenile Justice Delinquency Prevention's (OJJDP) sight and sound separation requirements. This legislative proposal ensures that a child who is alleged to be in need of services is not incarcerated with juvenile delinquents in a JCC.

## *Confidentiality*

**HB 1096 - Juveniles' Fingerprints and Photographs Required if Charged with Certain Delinquent Acts. Delegate Moran.** HB 1096 amended Virginia Code § 16.1-299. HB 1096 addressed confusing language in that section pertaining to the taking of photographs and fingerprints of juveniles. Prior to HB 1096, Virginia Code § 16.1-299 allowed law-enforcement officers to take the fingerprints and photographs of a juvenile when that juvenile was arrested for a delinquent act that would be reportable to the Central Criminal Records Exchange (CCRE) pursuant to subsection A of § 19.2-390 (all felonies and most Class 1 and 2 misdemeanors except DUI, trespass, and disorderly conduct). Prior to HB 1096, Virginia Code § 16.1-299 required law-enforcement officers to take the fingerprints and photographs of a juvenile when that juvenile was arrested for a violent juvenile felony.

Under HB 1096 law-enforcement officers must take the fingerprints and photographs of a juvenile when that juvenile is arrested for a delinquent act that would be reportable to CCRE. If a juvenile is adjudicated delinquent or found guilty of a felony, copies of his fingerprints and a report of the disposition will be sent to the CCRE. If a petition or warrant is not filed against a juvenile, the fingerprint card, copies of the fingerprints, and photographs must be destroyed 60 days after fingerprints were taken. The fingerprint card, copies of the fingerprints, and photographs do not need to be destroyed if the juvenile is found not guilty for a violent juvenile felony or any other felony. HB 1096 removed the 14 years of age barrier.

## *Gangs*

**HB 569 & SB 321 - Omnibus Gang Bill. Delegate Albo & Senator Stolle.** HB 569 and SB 321 amended Virginia Code §§ 18.2-46.1, 18.2-46.3, 18.2-460, and 19.2-215.1 and created in Article 2.1 of Chapter 4 of Title 18.2 sections numbered 18.2-46.3:1 and 18.2-46.3:2. HB 569 and SB 321:

- amend the definition of “criminal street gang” to include the current definition of “pattern of criminal gang activity;”
- create a Class 1 misdemeanor for a person of any age to recruit a person into a criminal street gang (current law punishes an adult recruiting a minor as a Class 6 felony);
- create a Class 6 felony for forcing a person to become a gang member through the use or threat of force against that person or another person;
- make a third or subsequent conviction within 10 years of prohibited criminal street gang participation and recruitment a Class 3 felony (five to 20 years);
- allow for the forfeiture of any property, real or personal, used in connection with street gang activity;
- amend the obstruction of justice statute to include gang-related crimes; and
- add gang activity to the list of crimes that a multi-jurisdictional grand jury can investigate.

**SB 617 - Gang-Related Felony Offenses and Qualification for SHOCAP. Senator O'Brien.** SB 617 amended Virginia Code § 16.1-330.1 pertaining to the Serious or Habitual Offender Comprehensive Action Program (SHOCAP). SB 617 provides that a juvenile who has been convicted of a felony violation of a gang-related crime qualifies for SHOCAP. Prior to SB 617 a juvenile must have been convicted of three felonies or misdemeanors to qualify unless the felonies were murder, attempted murder, armed robbery, or malicious wounding. SHOCAP is a program that provides

control, supervision, and treatment for serious or habitual juvenile offenders. Localities are struggling to address increasing gang activity involving acts of violence with firearms or other weapons and drugs. This bill provides a locality another tool to combat gang problems by allowing a multi-disciplinary approach to supervising juveniles who have been involved in gang-related criminal acts.

### ***Involuntary Mental Commitments – TDOs***

**HB 580 - Jurisdiction Over Involuntary Commitment Order Hearings. Delegate Hamilton.** HB 580 amended Virginia Code §§ [16.1-340](#) and [16.1-341](#). Prior to HB 580 the Virginia Code did not specify which juvenile court had jurisdiction to hear the temporary detention order (TDO) hearing. HB 580 clarifies that the juvenile court serving the jurisdiction in which the minor is located or resides shall have jurisdiction to conduct the emergency TDO hearing. The juvenile court serving the jurisdiction in which the minor is located shall have jurisdiction to conduct the involuntary commitment hearing.

**HB 589 - Transportation under Emergency Custody and Temporary Detention Orders. Delegate Janis.** HB 589 amended Virginia Code §§ [37.1-67.01](#), [37.1-67.1](#), and [37.1-71](#). HB 589 created subsection B under Virginia Code § [37.1-67.01](#) pertaining to the transportation of a minor when an emergency custody order has been issued by a magistrate. According to the new subsection, when a magistrate issues an emergency custody order, the order must “*specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation.*”

### ***School Attendance and Truancy***

**HB 1326 - Compulsory School Attendance – Enforcement against Parents. Delegate Marrs.** HB 1326 amended Virginia Code §§ [16.1-241.2](#), [16.1-263](#), [22.1-263](#), and [22.1-279.3](#) and created in Article 9 of Chapter 11 of Title 16.1 a section numbered [16.1-290.1](#). Virginia Code § [22.1-279.3](#) requires parents of a student enrolled in a public school to assist the school in enforcing the standards of student conduct and attendance. Virginia Code § [16.1-241.2](#) provides the statutory authority for holding parents accountable for failing to meet their responsibilities of ensuring that their child complies with the standards of conduct or the compulsory school attendance law. HB 1326 amended Virginia Code § [16.1-241.2](#) to allow the juvenile court to use its contempt powers to enforce any order entered. Prior to HB 1326 the court’s authority to use its powers of contempt was specifically prohibited.

HB 1326 amended Virginia Code § [16.1-263](#) to hold that failure to obey the requirements of **any** summons subject any person guilty thereof to liability for punishment for contempt. Upon the failure of any person to appear as ordered in the summons, the court shall immediately issue an order for such person to show cause why he should not be held in contempt.

HB 1326 created Virginia Code § [16.1-290.1](#) to provide the court with the authority to order the participant in any treatment, counseling, or other program for the rehabilitation of a minor child or his family to pay as much of the applicable fee for participation as such person is able to pay. A finding of guilt shall not be required for the court to order payment.

HB 1326 amended Virginia Code § [22.1-263](#) to make it a Class 3 misdemeanor for any person to violate “*the parental responsibility provisions relating to compulsory school attendance included in § [22.1-279.3](#).*”

### *Custody and Visitation*

**HB 344 & SB 103 - Capping Filing Fees for Custody and Visitation Petitions. Delegate Kilgore & Senator Devolites.** HB 344 and SB 103 amended Virginia Code §§ 16.1-69.48:5 and 16.1-296 and created § 16.1-296.2. Prior to these bills Virginia Code § 16.1-69.48:5 required a \$25.00 fee to be filed with the clerk of the court when a person filed a petition alleging a dispute in the custody or visitation of a child. The fee applied to each custody and visitation petition filed for each child. HB 344 and SB 103 amended the Virginia Code to provide that only one \$25 fee shall be required for all custody and visitation petitions simultaneously initiated by a single petitioner barring any add-on fees in these cases and apply the special rate for appeal of these cases. These bills also corrected an omission from the 2003 session clarifying that a petition may be reissued without additional costs or fees if service could not be obtained.

## **2003 Juvenile Justice Legislative Highlights**

### *Juvenile Court Proceedings*

**HB 2282 and SB 1060 - Pre-dispositional Detention of Juveniles. Delegate Hurt & Senator O'Brien.** The genesis of this legislation was an August 2002 Attorney General's (AG) opinion that stated a juvenile court judge has no authority to temporarily detain a juvenile, after an adjudication hearing but pending the disposition hearing, when the juvenile was not originally taken into custody and detained. It was the opinion of the Attorney General that the juvenile court judge had no statutory authority to temporarily detain a juvenile, after an adjudication hearing where the juvenile is determined to be delinquent but pending the disposition hearing, when the juvenile was not originally taken into custody and detained pursuant to Virginia Code § 16.1-248.1. Prior to the AG's opinion, if a juvenile was released upon being arrested or following the detention hearing but subsequently evidence arose that the juvenile should be detained in a detention facility in accordance with the provisions in Virginia Code § 16.1-248.1, common practice had been for the juvenile court to order such detention. However, the AG's opinion asserted that the juvenile court had no such authority to issue such an order.

HB 2282 and SB 1060 fixed the issue raised in the AG's opinion by amending Virginia Code § 16.1-248.1 concerning the statutory authority for determining if a juvenile who is arrested ought to be released or detained in a juvenile detention facility or a shelter care. HB 2282 and SB 1060 clarified that a juvenile and domestic relations court judge has the authority to order a juvenile into detention prior to the final disposition even if the juvenile was not ordered into detention when first taken into custody. The statutory criteria for placing a juvenile in detention were not changed.

**HB 1559 - Truancy – Informal Diversion - Defer and Dismiss. Delegate Orrock, Sr.** HB 1559 amended Virginia Code § 16.1-260 to allow a juvenile alleged to be a truant to be placed in a truancy diversion program. Under prior Virginia law the juvenile code treated truants the same as violent juvenile felons at the time of intake. If the intake officer received a request from a school division for a petition alleging that the juvenile was a truant, the intake officer had no option but to file the petition and initiate formal court action. HB 1559 allows the intake officer to defer filing a petition alleging truancy with the court for 90 days and to proceed informally by developing a truancy plan or placing the juvenile in a truancy program. Under the provisions of HB 1559, a juvenile who is alleged to be a



truant can be diverted from formal court action one time. If the juvenile has been proceeded against before, the intake officer must file a petition with the court. To defer the complaint from formal court action, the juvenile and his parents or guardian must agree, in writing, for the development of a truancy plan. The truancy plan may require the juvenile and his parents or legal guardian to participate in programs and services deemed necessary to ensure the juvenile's compliance with the compulsory school attendance. The truancy plan may include a referral of the juvenile to the appropriate public agency for the purpose of developing a plan using an interagency interdisciplinary team approach. If the juvenile has not successfully completed the truancy plan or program at the end of the 90-day period, the intake officer shall file the petition.

**HB 1520 & SB 991 - Juvenile and Domestic Relations Court Expanded Jurisdiction. Delegate Black & Senator Mims.** HB 1520 and SB 991 amended Virginia Code § 16.1-228 by expanding the definition of "child in need of services" (CHINS). Currently, CHINS means a child whose behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of the child. HB 1520 and SB 991 amended the definition of CHINS to include *a child under the age of 14 whose behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of another person*. This legislation was in response to an incident involving the assault of a three-year-old girl by two boys, ages five and six. Following the assault and battery, the parent of the victim attempted to file a criminal complaint with local law enforcement. Apparently, because of the young ages of the perpetrators, law enforcement instructed the parent to seek recourse with DSS. Not satisfied with the response to the assault, the parent of the victim child sought assistance from her local legislators. Creating confusion was the issue of whether or not common law is applicable in the juvenile court proceeding. Briefly, at common law, children under the age of seven are conclusively presumed to be without criminal capacity. Children between the ages of seven and 14 are presumed to be incapable of forming criminal intent. If common law applies in juvenile court, there was not an adequate remedy in the Virginia Code that addressed the above-described tragic event.

**HB 2444 - Juvenile Court Fees for Custody and Visitation Petitions. Delegate Griffith.** This bill amended the Code of Virginia by adding a section numbered [16.1-69.48:5](#) relating to fees for services of juvenile and domestic relations district court judges and clerks in certain civil cases. HB 2444 requires that a \$25 filing fee be paid by the petitioner prior to the initial commencement of any case in the juvenile and domestic relations district court when the custody or visitation of a child is a subject of controversy or requires determination. A case will not be set for hearing by the clerk of the court until the fee has been paid except on account of poverty as provided in § [17.1-606](#). The fees will be paid to the clerk in the jurisdiction in which the petition is filed. The fee will not be charged to any state or local government entity.

### ***Sharing Confidential Records***

**HB 1572 - Sharing Confidential Juvenile Information with Schools. Delegate Hamilton.** HB 1572 amended Virginia Code §§ [16.1-301](#), [16.1-305.1](#), [16.1-305.2](#), [16.1-309](#), [22.1-254](#), [22.1-277](#), [22.1-277.2:1](#), and [22.1-288.2](#) relating to the sharing of confidential juvenile records. HB 1572 rewrote provisions regarding the notification to a school division superintendent or school principal of criminal involvement of students. Prior to HB 1572 the law required division superintendents be notified when a petition was filed for certain crimes, but there was no follow-up as to the disposition of the charges unless there was a conviction. HB 1572 ensures that when a school system has received information that alleges a juvenile has committed a serious delinquent act, that school system also is notified when

the allegation has been disposed. Previously, the school system was only notified when the juvenile was adjudicated delinquent or convicted. Therefore, this bill ensures that the school system that received information about a juvenile is notified that the juvenile has been exonerated. The bill was the result of a study group convened by the Commission on Youth to look at caveats in the Virginia Code that inhibited the appropriate sharing of juvenile confidential information. Members in that group included DJJ staff.

**SB 1078 - Releasing Confidential Department Records. Senator Rerras.** SB 1078 amended Virginia Code § 16.1-300 to provide the following: (1) that any person who has reached the age of majority (not only those who were previously wards of the Department) may request his own records; (2) that persons treating individuals in the juvenile justice system (not just wards of the Department) may request access to the juvenile's records; and (3) that the Department may withhold information, with the concurrence of the juvenile and domestic relations court having jurisdiction, when disclosure would be harmful to the juvenile or a third party. The bill also clarified which court will have jurisdiction when a juvenile has been, but is no longer, in the custody of the Department. The bill was the result of a Commission on Youth study of juvenile records.

### ***Committed Juveniles***

**SB 1246 - Child Support Payments to Department of Juvenile Justice. Senator Mims.** SB 1246 amended Virginia Code § 16.1-290 pertaining to requiring the court to order a parent or other legally obligated person to pay a reasonable sum commensurate with the ability to pay that will cover all or part of the cost of support and treatment of the juvenile committed to the custody or temporary custody of DJJ after the decree is entered. SB 1246 streamlines and expedites a prior process that was cumbersome, unfair, and rarely utilized. Rather than requiring a court hearing to determine the amount of support owed, SB 1246 allows the amount of child support to be determined administratively. SB 1246 eliminates the need for an investigation and a separate hearing by the juvenile court to determine the amount of support the responsible person ought to pay. The Division of Child Support Enforcement is able to process and act upon an application for child support much quicker and more efficiently than the court can. Nonetheless, should the responsible person dispute the award of child support or the amount of the support, that person would be able to appeal that administrative order to the appropriate court.

### ***Department of Juvenile Justice Administration and Operations***

**HB 2518 - Hiring Authorities for Court Service Units' Directors and Staff. Delegate McDonnell.** HB 2518 amended Virginia Code §§ [16.1-233](#), [16.1-235](#), and [16.1-236](#) relating to hiring Directors and staff for CSUs. Prior to HB 2518 the hiring and assigning of personnel to state-operated CSUs was one function involving the mutual responsibilities of the judges of juvenile and domestic relations district courts and the Director of DJJ. To say that this mutually shared responsibility to hire has, at times, been problematic is an understatement. If a conflict should occur, the Virginia Code fails to provide guidance to resolve such disputes. HB 2518 addressed the above-mentioned issues by clearly delineating the authority to hire juvenile probation staff between DJJ and the judiciary. First, the Director of DJJ hires the probation officer staff, including supervisory staff, for state-operated CSUs. Second, HB 2518 clarifies that the local governing body hires the probation officer staff for a locally operated CSU. Third, the judge or judges would be responsible for selecting the CSU director from

the qualified candidates selected in accordance with the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Virginia Code.

## **2002 Juvenile Justice Legislative Highlights**

### ***Intake***

**HB 298 - Intake Jurisdiction Statewide. Delegate McDonnell.** Court service units are mandated by Virginia Code § 16.1-255 to promptly respond to detention petitions when the juvenile court is not in session. HB 298 created Virginia Code § 16.1-235.1 and amended Virginia Code § 16.1-255 to allow a chief judge from one judicial district to enter into an agreement with another chief judge for a replacement intake officer to ensure the capability of a prompt response during hours that the court is not open in matters involving detention orders under § 16.1-255 and intake petitions under § 16.1-260. The replacement intake officer has all the authority and power of an intake officer of that district. This legislation is discretionary and not mandatory. A CSU may only provide intake services for another CSU with the approval of the chief judges in affected localities.

**HB 160 - Denial of Driver's License for Truancy. Delegate Lingamfelter.** Virginia Code § 16.1-278.9 allows the court to suspend a juvenile's driver's license for an offense relating to truancy as defined in Virginia Code § 22.1-258. HB 160 added a new paragraph to § 16.1-278.9 that allows the court to suspend a juvenile's license for one year or up to the age of 18 for a second or subsequent truancy offense. If the court finds a second or subsequent truancy offense, the court may order the denial of a driver's license for a period of one year or until the juvenile reaches the age of eighteen, whichever is longer. Or, the court may delay the child's ability to apply for a driver's license for one year following the date he reaches the age of 16 and three months.

### ***Detention Utilization***

**HB 259 & SB 467 - Criteria for Pre-dispositional Detention - Salvatierra Case. Delegate McQuigg & Senator Puller.** HB 259 and SB 467 amended Virginia Code § [16.1-248.1](#) relating to the criteria for placing a juvenile in detention. HB 259 and SB 467 provide that a juvenile may be detained in a secure facility pursuant to a detention order or warrant when there is probable cause to believe that he violated the terms of his probation or parole and the charge for which he was originally placed on probation or parole would have been a felony or Class 1 misdemeanor if committed by an adult. This bill clarified criteria for detention eligibility in light of the Virginia Court of Appeals decision in *Salvatierra v. City of Falls Church*. The Virginia Court of Appeals rendered an opinion that the charge of "Violation of Probation" is not a Class 1 misdemeanor. That decision is consistent with the position of DJJ. However, based on the Virginia Court of Appeals opinion in the *Salvatierra* case, there has been confusion about whether or not it is permissible to detain a juvenile on a violation of probation or parole regardless of an underlying offense that is a felony or a Class 1 misdemeanor.

**HB 1000 - Uniform Risk Assessment Instrument for Placement in Detention. Delegate McDonnell.** HB 1000 amended the second re-enactment clause contained in SB 66 (Chapter 978 of the 2000 Acts of Assembly) as passed by the General Assembly in 2000. The second re-enactment clause required DJJ to establish guidelines for use by CSU personnel when making recommendations to the juvenile court regarding the secure detention of juveniles prior to disposition. HB 1000 required

DJJ to establish a uniform risk assessment instrument for use when making detention decisions and recommendations at detention hearings for implementation by each CSU and for distribution to each juvenile court judge by October 1, 2002.

**HB 1236 - Judge Cannot Place Adults in Juvenile Detention Centers. Delegate Jones.** HB 1236 amended Virginia Code § 16.1-249(H) to address the ability of a juvenile and domestic relations court judge to order the pre-dispositional detention of a person 18 years of age or older in an adult facility and not in a juvenile detention facility. HB 1236 amended Virginia Code § 16.1-249(H) to require a judge to detain a person 18 years of age or older prior to disposition in an adult facility. However, a judge may order the pre-dispositional detention (in a juvenile facility) of a person 18 years of age or older if that detention is ordered for violation of the terms and conditions of release from a JCC.

### ***Sentencing a Juvenile Convicted as an Adult***

**SB 534 - Violent Juvenile Felonies – Blended Sentencing. Senator Mims.** Senate Bill 534 amended Virginia Code §§ 16.1-272 and 16.1-285.2 to allow the circuit court to impose an active adult sentence, but allow a portion of that sentence to be served in a JCC in accordance with Virginia Code § 16.1-285.1. SB 534 gave the circuit court judge an additional dispositional alternative when sentencing a juvenile who has been tried as an adult and convicted of a violent juvenile felony, but who may benefit from the treatment and rehabilitative programs available through DJJ. The circuit court retains jurisdiction of the case throughout the juvenile's commitment to the Department. At any time during the commitment, the circuit court may modify the juvenile sentence or the active adult sentence based upon the juvenile's progress at the JCC. If the juvenile performs well, the circuit court maintains the ability to suspend all or part of the adult sentence. If the juvenile is not amenable to the juvenile correctional setting, the court may transfer the juvenile to an adult facility to finish his sentence.

### ***Court Service Unit Staff***

**SB 533 - State Court Service Units Reverting to Locally Operated. Senator Mims.** HB 533 created paragraph C in § 16.1-235 of the Virginia Code to allow localities currently served by a state-operated CSU to convert from a state-operated unit to a locally operated CSU. The bill reversed the legislative policy taken in the mid-1970s authorizing the Department to operate CSUs in localities that requested inclusion in a statewide system of CSUs. Prior to SB 533 no provision was made for localities to revert from a state-operated CSU to a locally operated CSU. The General Assembly's historical concerns with maintaining uniform statewide services are expressed in Virginia Code § 16.1-235 "that uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth." Virginia Code § 16.1-234 continues the mandate on the Director of the Department to establish and operate "an adequate and coordinated program of probation, parole and related services..."

## **2001 Juvenile Justice Legislative Highlights**

### ***Confidential Juvenile Records***

**HB 2841 - Releasing Law-Enforcement Records to School Officials When a Juvenile is a Suspect for Certain Crimes. Delegate Cox.** HB 2841 amended Virginia Code § 16.1-301 relating to disclosure that a juvenile is a suspect in or has been arrested for certain crimes. Prior to HB 2841 the Virginia Code only allowed law-enforcement records to be open to public disclosure when a juvenile 14 years of age or older was charged with a violent juvenile felony as specified in subsections B and C of § 16.1-269.1. HB 2841 significantly broadened that section of the Code by allowing the chief law-enforcement officer of a jurisdiction to disclose to school officials that a juvenile is a suspect in or has been charged with (i) a violent juvenile felony; (ii) a crime involving arson or bombs; (iii) a crime involving drugs or drug paraphernalia; or (iv) a crime involving weapons.

### ***Juvenile Correctional Centers***

**SB 1296 - Post-Release Supervision (Parole). Senator Mims.** Prior to SB 1296 the Department placed indeterminately committed wards on post-release supervision (parole) administratively. It was not clear whether or not the Department had the authority to do so. SB 1296 provided the clear statutory authority for releasing a juvenile from an indeterminate commitment to a JCC under parole supervision by DJJ. DJJ now has the authority to discharge any juvenile or person from parole in accordance with policies and procedures established by the State Board of Juvenile Justice. Specifically, SB 1296 amended Virginia Code §§ 16.1-233, 16.1-235, 16.1-237, 16.1-285, 16.1-291, 16.1-293, and 63.1-248.3 to provide the Department with the authority to provide post-release supervision to a juvenile who was indeterminately committed to a JCC. SB 1296 amended Virginia Code § 16.1-293 to ensure that supervision of a parolee is the responsibility of DJJ and not the Department of Social Services. SB 1296 removed CSUs from having the authority to conduct child protective services investigations. Finally, SB 1296 clarified that the court has the same dispositional options available when a juvenile or other person violates either the terms of probation or the terms of parole.<sup>3</sup> SB 1296 clarified that the juvenile court retains authority over an adult on probation or parole for violations committed as a juvenile.

**HB 2631 - Carnal Knowledge of Ward, Probationer, or Parolee by Employee or Volunteer of the Department of Juvenile Justice: Penalty. Delegate O'Brien.** HB 2631 amended Virginia Code § 18.2-64.2 to ensure that any person providing services or supervision to any ward, probationer, or parolee who carnally knows any ward, probationer, or parolee will be guilty of a Class 6 felony. Currently, Virginia Code § 18.1-64.1 only applies to juvenile wards, probationers, and parolees under the age of 18. HB 2631 ensures that wards, probationers, and parolees who are between the ages of 18 to 21 and under the supervision of DJJ, a secure facility or detention home, or a state or local courts services unit are also protected.

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<sup>3</sup> On January 30, 2001, the Virginia Court of Appeals reversed a lower court's ruling that a juvenile had violated his probation and subsequent commitment to DJJ. The Court of Appeals held that the lower court erroneously admitted hearsay evidence and failed to apply the proper standard of proof in adjudicating the petition. The Court held that the proper standard for a violation of probation hearing is beyond a reasonable doubt. SB 1296 fixes the offending statutory language cited by the Court of Appeals. *Commonwealth v. Pannell*, 263 Va. 497, 561 S.E.2d 724, 2002 LEXIS 53 (2002).



*Side bar:* Prior to HB 2631 it was a Class 6 felony for a DJJ employee or volunteer to carnally know a juvenile in the custody or under the supervision of DJJ. A ward, probationer, or parolee can be under the supervision or in the custody of DJJ until that person attains the age of 21. A gap in the statute exists whereby a DJJ employee or volunteer may carnally know a ward, probationer, or parolee 18 years of age or older and not be guilty of a felony. HB 2631 fixed that gap.

**HB 2795 - Circuit Court Commitments of Serious Juvenile Offenders. Delegate McDonnell.** HB 2795 amended Virginia Code § 16.1-285.1 to allow the circuit court to qualify a transferred juvenile as a serious offender and commit him to DJJ regardless of whether or not he meets existing criteria regarding criminal background if, upon the court's review of the juvenile's entire criminal history, such qualification is otherwise justified. Briefly, any juvenile who has been tried and convicted as an adult by the circuit court may be sentenced as a serious offender and given a determinate commitment to DJJ.

## **2000 Juvenile Justice Legislative Highlights**

### ***Juvenile Court Dispositions and Punishments***

**HB 295, SB 150 & SB 344 - Raising the Criteria to Commit a Juvenile to the Custody of the Department of Juvenile Justice. Delegate McDonnell & Senators Stolle and Forbes.** These bills were the most significant juvenile justice legislation enacted in 2000. Virginia Code § 16.1-278.8 provides the criteria for committing a juvenile to the custody of DJJ for placement in a JCC. Prior to these bills a juvenile could be committed to the custody of DJJ and placed in a JCC for a felony or a Class 1 misdemeanor if there was a prior felony or Class 1 misdemeanor. Commitment criteria for a felony remained the same. However, this legislation provided that a juvenile can be committed to a juvenile correctional facility only for an offense that would be a Class 1 misdemeanor if the juvenile has previously been adjudicated delinquent for a felony or adjudicated on *three occasions* for offenses that would be Class 1 misdemeanors. Essentially, the legislation raised the number of Class 1 misdemeanor adjudications needed for commitment from two to four. This legislation furthered the policy that JCCs should house, treat, and rehabilitate only serious juvenile offenders. Juveniles with less significant misdemeanor histories ought to be dealt with at the local level. This legislation also clarified the intent of Virginia Code § 16.1-278.8(A)(14) by ensuring that a juvenile must be at least 11 years of age to be committed to the Department.

**SB 66 - Placement of Juveniles in Secure Local Facility – Post-Dispositional Detention. Senator Mims.** SB 66 amended the criteria for placing a juvenile in post-dispositional detention pursuant to Virginia Code § 16.1-284.1. SB 66 requires documentation that the juvenile failed in past treatment efforts. Juveniles adjudicated delinquent or convicted of a violent felony were removed from eligibility for placement in post-dispositional detention. An assessment of the juvenile concerning whether or not the juvenile is an appropriate candidate for placement must be completed by the secure detention home in which the juvenile is to be placed. SB 66 removed language providing a juvenile with credit for time already served in the detention facility. If the juvenile is eligible for commitment to DJJ, the court may give the juvenile a suspended commitment and place the juvenile in post-dispositional detention. If a suspended commitment is imposed, SB 66 requires the juvenile court to impose the suspended commitment if the juvenile fails to successfully complete the post-dispositional

detention program. The provisions of SB 66 amending Virginia Code § 16.1-284.1 did not become effective until July 1, 2002. SB 66 also amended the requirements for placing a juvenile in boot camp by allowing a juvenile who has been adjudicated delinquent for a Class 1 misdemeanor to be placed in the program.<sup>4</sup>

**HB 490 - Suspension of Driver's License for Truancy. Delegate Hamilton.** This legislation amended Virginia Code § 16.1-278.9 relating to suspension of driver's license for truancy from school. It requires the juvenile and domestic relations district court to order denial of driving privileges for at least 30 days to any child at least 16 years of age upon a finding that the child has failed to comply with certain school attendance and parent-school conference requirements. A similar finding for a child 13 to 15 years of age would result in a delay of 30 days or more in his ability to apply for a license after reaching age 16.

### *Releasing Confidential Juvenile Information*

**SB 343 - Confidentiality of Department Records. Senator Forbes.** SB 343 amended Virginia Code § 16.1-300 to allow DJJ the discretion to share confidential information about a juvenile with a legitimate interested party when it is in the best interests of that juvenile's rehabilitation and treatment, or for institutional security. This legislation ensures that the Department can share information with a treatment provider who is treating or providing services to the child pursuant to the Virginia Juvenile Community Crime Control Act. Passage of SB 343 was important in facilitating the necessary sharing of information between the Department and other professionals who are providing treatment, rehabilitation services, or supervision for a juvenile.

**SB 312 - Releasing Confidential Law-Enforcement Records When Juvenile is Charged with a Violent Felony. Senator Reynolds.** Virginia Code § 16.1-301 relates to the confidentiality of a law-enforcement record and the ability to release a juvenile's law-enforcement record. Prior to SB 312 Virginia Code § 16.1-301 provided that information may be released only if the juvenile is charged with murder or aggravated malicious wounding. SB 312 amended Virginia Code § 16.1-301 to allow law-enforcement agencies to release to the public records of a juvenile 14 years of age or older charged with a violent juvenile felony. Violent juvenile felonies are defined in Virginia Code §§ 16.1-228 and 16.1-269.1. Violent juvenile felonies are those felonies for which a juvenile may be certified to be tried in circuit court as an adult.

**HB 1206 - Retaining a Juvenile's Fingerprints and Photographs When Charged with a Violent Juvenile Felony. Delegate Cantor.** Prior to HB 1206 Virginia Code § 16.1-299 required the destruction of fingerprint cards and photographs of all juveniles who have been found not guilty after being charged with a delinquent offense. HB 1206 amended Virginia Code § 16.1-299 to allow law-enforcement agencies to retain fingerprints and photographs of juveniles charged with, but not convicted of, violent juvenile felonies or ancillary crimes.

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<sup>4</sup> Legislation enacted in 2000 (SB 150, SB 344, and HB 295) raised the eligibility requirements for committing a juvenile to the Department. Subsequently, the requirements for placing a juvenile in boot camp also were raised. SB 66 contained language lowering the criteria for placement in a boot camp by specifically allowing the court to send a juvenile to boot camp for a Class 1 misdemeanor.

### *Sentencing a Juvenile Convicted as an Adult*

**HB 275 - Power of the Circuit Court over Juvenile Offender. Delegate Cantor.** HB 275 amended Virginia Code § 16.1-272 relating to the circuit court's authority to sentence a juvenile convicted as an adult. HB 275 clarified the intent of the juvenile justice reform acts of 1996 and 1997 when circuit court sentences a juvenile who is convicted as an adult of a nonviolent felony. HB 275 ensured that the circuit court, when sentencing a juvenile as an adult for a nonviolent felony, may impose an adult sentence and suspend the sentence conditioned upon successful completion of a juvenile disposition. The option of combining a juvenile disposition with a suspended adult sentence benefits the public safety by providing an incentive to a committed juvenile to successfully complete his treatment program in lieu of serving his suspended adult sentence.

### *The Original Gang Bill*

**SB 143 - The Creation of Gang-Specific Criminal Code Sections. Senator Forbes.** During the 2000 session, the General Assembly enacted SB 143 creating specific statutes to address gang-related crimes. SB 143 created Virginia Code § 18.2-46.2 stating that any person who actively participates in or is a member of a criminal street gang and participates in a predicate criminal act could be convicted of a Class 5 felony. If such participant in or member of a criminal street gang is 18 years of age or older and knows or has reason to know that the criminal street gang includes a juvenile member or participant, that adult will be guilty of a Class 4 felony. SB 143 also created a new section of the Virginia Code that prohibited the recruitment of a juvenile into a criminal street gang. An adult gang member who recruited a juvenile to be in a criminal street gang was guilty of a Class 6 felony. SB 143 was initiated as a result of studies by the Attorney General's Office and the Commission on Youth. Those studies indicated a substantial rise in street gang activity in the Commonwealth. In fact, both studies indicated "franchising" of street gangs from the west coast to Virginia. The primary purpose of SB 143 was to provide additional tools to combat street gang violence.

## **1999 Juvenile Justice Legislative Highlights**

### *Intake*

**SB 966 - Intake Notifications to School when Petitions are Filed. Senator Reynolds.** This bill amended Virginia Code §§ 16.1-260 and 16.1-305.1 expanding the offenses for which the superintendent of a school system must be notified by the intake officer when a petition is filed. Virginia Code § 16.1-260(G) requires the intake officer, upon the filing of a petition, to immediately notify by telephone the superintendent of the school division in which the child is enrolled or was enrolled when the juvenile is alleged to have committed certain enumerated offenses. SB 966 expanded the list of offenses requiring notice to the school superintendent. The added offenses are: a firearm offense pursuant to Articles 4 (§18.2-279 et seq.), 5 (§18.2-288 et seq.), 6 (§18.2-299 et seq.), or 7 (§18.2-308 et seq.) of Chapter 7 of Title 18.2; and, robbery pursuant to §18.2-58. The offenses dealing with firearms include discharging firearms or missiles within or at a building or dwelling house; any violation of the Uniform Machine Gun Act; any offense under the "Sawed-off" Shotgun and "Sawed-off" Rifle Act; and any offense pertaining to carrying concealed weapons. SB 966 also amended Virginia Code § 16.1-305.1 to require the court clerk to notify the appropriate school

superintendent in writing of the disposition of the case to which the school received notice from the intake officer.

*Side bar:* SB 966 addressed the *Baker* issue as noted in the section summarizing legislation relating to trying and sentencing a juvenile as an adult.

### ***Juvenile Court Proceedings***

**HB 2043 & SB 1039 - Juvenile Competency. Delegate Jones & Senator Forbes.** Arguably, the most significant piece of legislation impacting the juvenile justice system was enacted during the 1999 General Assembly session. The issue of a juvenile's competency to stand trial can be raised during a delinquency proceeding. If there is probable cause to believe that the juvenile *lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense*, the court must order a competency evaluation. If the court determines that the juvenile is incompetent, court must consider restoration services for the juvenile.

**SB 886 - Juvenile Delinquents and Restitution. Senator Mims.** This legislation requires a court to order a juvenile to *make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim* when the juvenile committed a certain enumerated offense. If the court finds a juvenile delinquent for any of the enumerated offenses, the court must require the juvenile to participate in a community service project.

### ***Trying and Sentencing Juveniles as Adults***

**SB 966 - Notices When Petition and Issuing Summons (in part, the Baker Case). Senator Reynolds.** SB 966 amended Virginia Code §§ 16.1-260, 16.1-263, and 16.1-305.1 relating to juvenile petitions, summonses and disclosure of juvenile delinquency dispositions. SB 966 expanded the offenses for which an intake officer, upon the filing of a petition, and the clerk of the court, upon adjudication of delinquency or a conviction, must notify the superintendent of the school division in which the child is enrolled or was enrolled at the time of the offense. The offenses added are robbery and violations dealing with illegal weapons including the Uniform Machine Gun Act and the "Sawed-off" Shotgun and "Sawed-off" Rifle Act. The bill also contains a provision that only one parent has to be notified when a civil or criminal petition is filed concerning a juvenile.

*Side bar: The Baker Case – "At Least One Parent."* Jeramie Baker was 17 when he stabbed a convenience store clerk in March 1996. A jury convicted him of attempted robbery and unlawful wounding, and he was sentenced to 40 months in prison. But a three-judge panel of the Virginia Court of Appeals threw out that conviction in September 1998 ruling that Stafford County officials violated state law by not informing both parents of the charges as required by statute. Stafford County officials were not able to locate Baker's father. As a consequence, the court said Baker was entitled to a new trial. (See 28 Va. App. 306, 504 S.E.2d 394,396,1998 Va. App. LEXIS 484 (1998), quoting *Karim v. Commonwealth*, 22 Va. App. 767, 473 S.E. 2d 103 (1996) (en banc).) In June 1999 the Virginia Supreme Court sustained the decision. (See *Baker v. Commonwealth*, 258 Va. 1, 516 S.E.2d 219, 1999 Va. LEXIS 83.) SB 966 amended Va. Code § 16.1-263(A) to resolve the issue created in *Baker v. Commonwealth*. Va. App. Ct., Record No. 1436-97-4, Sept. 15, 1998. SB 966 amended Virginia Code § 16.1-263 to require

that, after a petition has been filed, a summons must be sent to “at least one parent” of the juvenile.

### ***Truancy***

**HB 1817 - Truancy and Compulsory School Attendance. Delegate Hamilton.** As a result of a Commission on Youth study, the 1999 General Assembly strengthened the truancy laws to hold students more accountable for unexcused absences. HB 1817 amended the timeframes necessitating action by the school and requiring juvenile court intervention. HB 1817 required an intake officer to file a petition with the juvenile court when a juvenile is the subject of a complaint filed pursuant to Virginia Code § [22.1-258](#) and the attendance officer has provided documentation to the intake officer following the pupil’s seventh absence without parental awareness and support. HB 1817 requires the intake officer to proceed formally and file a petition if a juvenile had been proceeded against informally previously. The enhanced truancy laws significantly increased the juvenile courts’ dockets and CSUs’ caseloads. The number of CHINSup petitions involving a truancy complaint grew by 46% between July 1, 1998, and June 30, 2001. The number of CHINSup petitions involving a truancy complaint that resulted in new probation cases grew by 44% during that same timeframe.